



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

September 25, 2020

Number: **2020-0027**
Release Date: 12/31/2020

CONEX-118432-20

UIL: 125.00-00

The Honorable Madeleine Dean
Member, U.S. House of Representatives
101 E. Main Street, Suite A
Norristown, PA 19401

Attention:

Dear Representative Dean:

I am responding to your inquiry dated August 24, 2020, on behalf of your constituent, . explained that he will have unused amounts in his dependent care flexible spending arrangement (FSA) under a Section 125 cafeteria plan because his children did not attend summer camp due to COVID-19 and he does not expect to have additional childcare expenses during 2020. He asked if his unused dependent care FSA contributions can be paid to him. He also mentioned that the IRS has provided relief to allow certain mid-year election changes to a dependent care FSA.

As noted, the IRS provided relief in Notice 2020-29 to allow, but not require, an employer to amend a Section 125 cafeteria plan to give employees increased flexibility to make mid-year election changes to their dependent care FSAs during 2020 on a prospective basis. However, this relief does not modify the rule that an employee's contributions to a dependent care FSA cannot be returned other than as reimbursements for dependent care expenses. This also applies to contributions the employee made before a mid-year election change. See Proposed Treas. Reg. § 1.125-5(i)(3).

In addition, a dependent care FSA may only reimburse dependent care expenses that are employment-related. For examples of dependent care expenses, see Publication 503, Child and Dependent Care Expenses. Publication 503 is available on the IRS

website at <https://www.irs.gov/pub/irs-pdf/p503.pdf>.

I hope this information is helpful. If you have additional questions, please contact me or
at .

Sincerely,

Denise Trujillo
Branch Chief, Health and Welfare Branch
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)